

<b>Nutrition Services</b> <b>Department of State Health Services</b>
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Effective October 1, 2008

Policy No. GA:01.0

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## **Confidentiality of Applicant/Participant Information**

### **Purpose**

To ensure compliance with Federal Regulations and to protect the right to privacy of WIC applicants/participants.

### **Authority**

7 CFR Part 246.26

### **Policy**

All applicant/participant information shall be kept confidential.

### **Definition**

Applicant/participant information – any information about a participant or applicant, whether it is obtained from the applicant or participant, another source, or generated as a result of WIC application, certification, or participation, that individually identifies an applicant or participant and/or a family member(s). Applicant or participant information is confidential, regardless of the original source and exclusive of previously applicable confidentiality provided in accordance with other Federal, State or local law.

### **Procedures**

- I. Each local agency (LA) is responsible for restricting the use and disclosure of information obtained from program applicants or participants.
- II. An applicant/participant or the parent/guardian of an infant or child applicant/participant has the right to access all information they have provided the WIC Program.

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- A. Any other information in the file or record need not be provided. This includes such things as documentation of income provided by third parties and staff assessments of participant's behavior or condition, unless required by Federal, State, or local law or policy or unless the information supports a State or local agency decision being appealed in relation to a participant fair hearing.
  - B. The LA shall provide a copy of the applicant/participant record free of charge to the applicant/participant or the parent/guardian of an applicant/participant.
- III. Disclosing information for WIC purposes to persons or entities other than the applicant/ participant or the parent/guardian of an infant or child applicant/participant is restricted to certain entities/persons as follows.
- A. Those persons directly connected with the administration and/or enforcement of the Program.
    - 1. This includes other WIC state or local agencies as may be necessary to provide uninterrupted continuation of services when transferring, WIC officials at the federal level, and the Comptroller General of the United States.
    - 2. A release signed by the WIC participant or parent/guardian is not necessary in these situations.
  - B. A third-party with the written consent of the applicant/participant or the parent/guardian.
- IV. Disclosure of information for non-WIC purposes is restricted to:
- A. That which is necessary to comply with the State laws on child abuse/neglect reporting and in accordance with the Department of State Health Services *Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Provider*;
  - B. That which is necessary to comply with an official investigation of a crime where identification by WIC staff of a WIC client is needed. As long as the person is not identified as a WIC

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applicant or participant, his/her identity may be divulged if the WIC staffer has seen documentation of the person's identity. For example: A WIC staff person's purse is stolen from the clinic. A video tape of a person using the WIC staff person's credit card is obtained by the police and shown to the WIC staff person. The staffer can state, "I saw this person in the clinic on such and such a day at such and such a time and she showed me an ID that said her name was Mary Smith." Do not reveal whether or not the person was a WIC applicant or participant.

- C. A third party with the written consent of the applicant/participant or the parent/guardian;
- D. Organizations that serve persons eligible for the WIC program for certain permitted non-WIC uses as designated in writing by the Department of State Health Services (DSHS) Commissioner of Health.
  - 1. The applicant or recipient must be notified either at the time of application or through a subsequent notice as the situation warrants. The subsequent notice may be mailed or presented to the client in person, as applicable.
  - 2. The SA or an LA must enter into a written agreement with the other public organization or with the program area of DSHS or the local WIC agency that will use the information. **Prior SA approval is required** before an LA can enter into any such agreement. Contact the Information and Response Management (IRM) staff at (512) 341-4400 (option 6, followed by option 4) to start the approval process.
  - 3. The written agreement must specify that the information may be used only for:
    - a. establishing the eligibility of WIC applicant/participants for the other organization's program(s); or

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- b. conducting outreach to WIC applicants/participants for the other program(s)
    - c. enhancing the health, education, or well-being of WIC applicants/participants who are currently enrolled in such programs, including the reporting of known or suspected child abuse or neglect that is not otherwise required by State law;
    - d. Streamlining administrative procedures in order to minimize burdens on staff, applicants, or participants in either the receiving program or the WIC program; and/or
    - e. Assessing and evaluating the responsiveness of a State's health care needs and health care outcomes.
  - 6. The written agreement must contain the receiving organization's assurance that it will not use the information for any other purpose or disclose to a third party.
  - 7. The State agency will decide whether or not an applicant/participant has the right to refuse to sign the release form concerning data release agreements. This also applies to agreements the LA may enter into with another entity. Whether or not an applicant/participant or parent/guardian has the right to refuse to share their data will be indicated on the Supplemental Information Form (SIF WIC-35-1) for state level data sharing initiatives. When an LA data sharing initiative is approved by the SA, the LA will provide a locally produced notice to the client.
- V. Release forms authorizing disclosure to private physicians or other health care providers may be included as part of the WIC application/certification process. All other requests for applicants/participants to sign voluntary release forms must occur after the application/certification process is complete.
- VI. Routine access to WIC applicant/participant information shall be limited to WIC staff, managers, and administrators who are responsible for the ongoing conduct of program operations. This

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provision excludes operational personnel not certifying and serving WIC applicants/participants and administrators who do not directly supervise WIC staff.

- VII. At all other times, applicant/participant information shall be kept confidential.
- A. WIC staff may discuss applicant/participant information with other WIC staff as appropriate. Discussion shall take place in private areas where the information cannot be overheard by other participants, staff from other programs, or the general public.
  - B. WIC staff shall ensure that a professional attitude is maintained at all times about applicant/participant information. This includes respecting the applicant/participant's privacy and maintaining respect for the dignity of the applicant/participant at all times.
- VIII. Regarding release of anonymous information: requests for data in aggregate or summary form may be granted as long as the released information excludes any items which would identify program participants/applicants.
- IX. Regarding release of joint program application form information: In using a joint application form, LAs shall not require applicants to apply for benefits in all programs for which the joint application is intended. Applicants shall be given the opportunity to choose, in writing, the programs for which they wish to apply. In so designating, the applicant is consenting only to the use and sharing of information on the form by the agencies specified and no written agreement is needed among programs.
- X. Confidential WIC applicant/participant information may be disclosed pursuant to a valid subpoena in accordance with the following procedures.

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- A. For documentation purposes, LAs shall immediately, upon receipt of a subpoena, notify the SA by contacting the IRM staff at 512/341-4400 (option 6 followed by option 4).
- B. The LA shall consult with legal counsel at its own agency to determine whether the information requested is in fact confidential and prohibited from release as stated in the subpoena. LAs may wish to provide their counsel with a copy of this policy and/or the federal regulations governing WIC confidentiality at 7 CFR §246.26 available at:  
<http://www.fns.usda.gov/wic/lawsandregulations/default.htm>
- C. If the LA determines the information is confidential and prohibited from disclosure as stated in the subpoena, the LA shall attempt to quash the subpoena unless the SA or LA determines that disclosing the confidential information is in the best interests of the WIC Program. Such a determination should only be made infrequently.
  - 1. Inform the requestor of the WIC confidentiality provisions and request a signed client release. Often the requestor is amenable to obtaining a client release rather than deal with a situation where the LA, in the absence of a release, has no choice but to attempt to quash the subpoena.
  - 2. If the SA or LA seeks to quash the subpoena or decides it is in the best interests of the Program to release the information, inform the court or the receiving party that the information is confidential under federal regulations and try to limit the disclosure by:
    - a. providing only the specific information requested in the subpoena and no other information; and
    - b. limiting to the greatest extent possible the public access to the disclosed information.
- D. LAs should also comply with any Local Agency policies governing subpoenas, unless the local policies conflict with SA policy.

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- XI. In responding to search warrants, the LA must comply with the following procedures:
- A. Upon receipt of a search warrant, immediately notify the SA by contacting the Information and Response Management (IRM) staff at 512/341-4400 (option 6 followed by option 4).
  - B. Immediately notify legal counsel for the LA and comply with any LA protocol concerning search warrants.
  - C. Comply with the search warrant; and
  - D. Inform the individuals serving the warrant that the information being sought is confidential and seek to limit the disclosure by providing only the information requested in the search warrant and limiting to the greatest extent possible the public access to the confidential information disclosed.
- XII. Local agencies may choose to negotiate an MOU with programs that routinely request WIC client information with client permission. These MOUs would set forth performance conditions in writing to which both parties have agreed. Some examples are:
- A. the information required to be stated on the request in order for the local agency to accept the release form (e.g., an itemized list of the information being requested; a timeframe for the information such as the most recent or all information ever collected);
  - B. the timeframes for filling a request (e.g., the local agency will complete all requests within 5 working days); and/or
  - C. performance conditions the other agency/program requests of WIC that are acceptable to the local agency.

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### Quick Guide to Release of Client Information

To be used for a WIC purpose

To Whom?	Persons <u>directly</u> connected with administration and/or enforcement of WIC – includes, but is not limited to, staff of other WIC LAs, both in and out of state; independent auditors under contract to the LA and LA auditors; USDA officials; and DSHS OIG investigators. Note: do not assume that requests from these entities are always for a WIC-purpose.	Other third parties Example: participant's doctor in order to obtain prescription for exempt formula, which is a WIC purpose
Consent of client required?	No	Yes
Notice to client required?	No	Yes as part of the release form



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### Quick Guide to Release of Client Information To be used for a non-WIC purpose

To Whom?	Those whom State law requires for reporting of suspected child abuse/neglect.  Examples: Department of Family and Protective Services (DFPS); local or state law enforcement	Programs run by DSHS, LAs or other public organizations that serve persons eligible for WIC.  Examples: Texas Health Steps for outreach to their program, which is a non-WIC purpose	Other third parties, excluding criminal cases (see IV.B)  Examples: Law office representing participant in custody dispute, which is a non-WIC purpose.
Written designation by Commissioner of Health and MOU between the SA/LA and the other entity?	No	Yes	No
Restricted to certain purposes only?	Yes	Yes	No
Consent of client required?	No	Optional – SA has discretion to decide	Yes
Notice to client?	No	Yes	Yes

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